



ELB E-BULLETIN

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Welcome to the fourth edition of the e-Bulletin (Volume V) brought to you by the Employment Labour and Benefits (ELB) practice group of Khaitan & Co. This e-Bulletin covers regulatory developments (including those relating to the upcoming labour codes), case law updates and insights into industry practices that impact businesses from a sector agnostic standpoint.

## 01.

### LABOUR CODES: STORY SO FAR

In this section, we help you in understanding the developments that have taken thus far on the implementation of the 4 labour codes on wages, social security, industrial relations, and occupational safety, health and working conditions, which received the Presidential assent between the years 2019 and 2020.

Broadly speaking, the labour codes, which aim to consolidate and consequently replace 29 central labour laws, are yet to be brought into force, barring provisions relating to (a) Central Advisory Board on minimum wages, and (b) identification of workers and beneficiaries through Aadhaar number for social security benefits. Moreover, even if the codes are fully brought into effect, the same would require issuance of rules, schemes, and notifications of the relevant governments so as to have a comprehensive revised compliance regime.

Under the labour codes, the 'appropriate government' for an establishment can be the Central Government or the State Government, depending on the nature of its operations or the existence of multi-state operations. Such appropriate government has the power to inter alia issue rules detailing some of the substantive aspects broadly set out under the codes and also prescribing procedural compliances such as filings, maintenance of registers, etc. In the last one year, several key industrialised states such as Haryana, Delhi, Maharashtra, Gujarat, Andhra Pradesh, Telangana, Tamil Nadu, and Karnataka released draft rules under some or all of the labour codes for public consultation (with Gujarat, Karnataka, and Uttar Pradesh also releasing final rules under certain labour codes). Among the industrialised states, notably, West Bengal is yet to release their draft rules under any of the codes.

## 02.


### REGULATORY UPDATES

In this section, we bring to your attention, important regulatory developments in the form of notifications, orders, bills, amendments, etc. witnessed in the past one month in the context of employment and labour laws.

#### [Telangana allows shops and establishments to operate 24\\*7](#)

By way of a notification dated 4 April 2023, the Government of Telangana has exempted all shops and establishments, as defined under Section 2(21) of the Telangana Shops and Establishments Act, 1988 (Telangana S&E Act) from the provision of Section 7 of the Telangana S&E Act, which deals with opening and closing hours of shops in the state. The exemption has been made subject to certain conditions, including: (a) giving every employee a weekly off and adhering to the weekly hours provision under the Telangana S&E Act; (b) ensuring adequate safety of women employees, along with requiring written consent from the women employees to work on a night shift; (c) giving a compensatory holiday with wages in lieu of the employees working on a notified national / festival holiday; and (d) providing overtime wages at the stipulated rates, to the employees for the extra hours of work beyond the normal working hours.

#### [Madhya Pradesh exempts industrial units from approvals and inspections](#)

By way of publication in the Madhya Pradesh Gazette on 6 April 2023, the Government of Madhya Pradesh enacted the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikiran Adhinyam 2023 (Act). The Act provides for exemptions to industrial units in Madhya Pradesh from obtaining approval and inspection requirements under several central labour statutes including: (a) Factories Act, 1948; (b) Contract Labour (Regulation and Abolition) Act, 1970; (c) Employees' State Insurance Act, 1948; (d) Minimum Wages Act, 1948; (e) Payment of Bonus Act, 1965; (f) Payment of Wages Act, 1936; (g) Maternity Benefit Act, 1961; (h) Payment of Gratuity Act, 1972; (i) Equal Remuneration Act, 1976; 

and (j) Madhya Pradesh Shops and Establishments Act, 1958.

To avail such exemption, an entity is required to notify the state nodal agency of its intention to invest by setting up an industrial unit. The nodal agency may issue an acknowledgement certificate on the basis of such notification. The acknowledgement certificate will be construed as an approval for a period of 3 years from the date of issuance of such certificate, during which, no inspection will be conducted at the entity's premises and only approvals for commencement of commercial activities will be required to be obtained from the relevant authorities.

#### [Maharashtra amends penal provisions under various labour laws](#)

The Government of Maharashtra has enacted the Maharashtra Labour Laws (Amendment) Act, 2022 (Maharashtra Act) vide a notification dated 11 April 2023, published in the Maharashtra Government Gazette. The Maharashtra Act revises the penalties under the following legislations: (a) Maharashtra Industrial Relations Act, 1947; (b) Maharashtra Labour Welfare Fund Act, 1953; (c) Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969; (d) Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981; and (e) Maharashtra Workmen's Minimum House-rent Allowance Act, 1983. The erstwhile penalties have been revised to the new and higher penalties under the aforementioned legislations, in the range of INR 5,000 to INR 10,00,000.

#### [EPFO grants an extension for mandatory seeding of Aadhaar with UAN](#)

By way of a circular dated 18 April 2023, the Employees' Provident Fund Organisation (EPFO) has granted an extension for mandatory seeding of Aadhaar with UAN (universal account number) of the eligible employee-members for filing of ECR up to 31 March 2024. This extension is applicable to the establishments falling in the categories of beedi making, building and construction and plantation industries (tea, coffee, cardamom, pepper, jute, rubber, cinchona, cashew nuts etc.) and for the north-eastern region comprising the states of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.

#### [EPFO provides further instructions regarding Sunil Kumar Case](#)

By way of a circular dated 23 April 2023, the Employees Provident Fund Organisation prescribed additional guidelines in view of the Supreme Court judgment of Employees' Provident Fund Organisation and Another v Sunil Kumar and Others [AIR 2022 SC 5634] (Sunil Kumar Case). The circular specifies that the online facility has been deployed and is available up to 3 May 2023 for receiving applications from employers towards: (a) validation of joint option in respect of employees who retired prior to 1 September 2014 and (b) joint option in respect of employees who were members of the Employees' Pension Scheme, 1995 (EPS Scheme) on 1 September 2014.

Further, such applications will be examined and verified with the data available in the field offices. Wherever there is a mismatch in data, the same will be informed to the employer and the employee / pensioner and will be accorded a time of one month to provide the necessary information.

#### [Punjab amends its shops and commercial establishment rules](#)

By way of a notification dated 24 March 2023 issued in the Punjab Government Gazette, the Government of Punjab has amended the Punjab Shops and Commercial Establishments Rules, 1958, to include Rule 22, which deals with the exhibition of a name board, and Rule 23, providing a corresponding penal provision. As per the same, every establishment is required to exhibit a name board in Gurmukhi script in Punjabi, and wherever other languages are also used, such version will be included below the Punjabi version (although the name board in the Punjabi version shall be written more predominantly in comparison to the other languages). All establishments are required to comply with this provision within 6 months from the date of the commencement of this amendment (31 March 2023). Establishments not complying with this provision shall be punishable with a fine of INR 1,000 for the first offence and INR 2,000 for every subsequent offence.



### ESIC provides guidelines for Aadhaar authentication

By way of a circular dated 17 April 2023, the Employees' State Insurance Corporation in furtherance of its notification dated 13 January 2023 (allowing seeding and authentication of Aadhaar in the system) has provided further guidelines and a user manual to expedite the process of Aadhaar seeding and generation of ABHA (Ayushman Bharat Health Account) number. The ABHA number will be a unique identification number for a person, which will facilitate updating of health records across multiple healthcare service providers.

An employer can seed the Aadhaar number while registering the employee. Further, by obtaining consent of the concerned employee, the ABHA number of the employees can also be generated on the basis of the Aadhaar number.

## 03.

### CASE UPDATES

In this section, we share important judicial decisions rendered in the past one month from an employment and labour law standpoint.

#### Proof of joint option under EPF Scheme not required for joint option under EPS Scheme: Kerala High Court (Interim Order)

Through an interim order in the case of Saheer S and Others v Union of India and Others [Writ Petition (Civil) Number 8979 of 2023], the Kerala High Court opined on the requirement of producing copies which evidence exercise of joint option under Paragraph 26(6) of the Employees' Provident Funds Scheme, 1952 (EPF Scheme) for the purpose of exercising joint option for higher pension benefits under the EPS Scheme. This order was issued pursuant to the ruling of the Supreme Court of India in the Sunil Kumar Case.

To the relief of the petitioners (even if temporary), the Kerala High Court took cognizance of the ground realities of the matter and noted the following:

*"Thus, when considering all the above aspects, the only view that can possibly be taken is that the petitioners have succeeded in establishing*

*a prima facie case...There cannot be any dispute that if they were not permitted to submit their options before the cut-off date, they would be deprived of their opportunity to claim the benefits of the judgment of the Honorable Supreme Court forever...the Employees Provident Fund Organization and the authorities under the same are directed to make adequate provisions in their online facility to enable the employees/pensioners to furnish the options in tune with the directions of the Honorable Supreme Court, without the production of the copies of option under paragraph 26(6) of the Scheme, 1952 and the details thereof, for the time being."*

In our [ERGO](#) dated 21 April 2023, we examined the key takeaways of this order and our observations in this regard.

#### Authorities cannot award any other interest rate on delayed gratuity payment other than 10%: Allahabad High Court

In the case of Laxman Singh Bhadauriya v Controlling Authority and Others [Writ (Civil) Number 18684 of 2010], the Allahabad High Court discussed Section 7 (3A) of Payment of Gratuity Act, 1972, which provides that the employer shall be liable to pay interest on delayed gratuity payments which should not exceed the rate notified by the Central Government. The Central Government had, by a notification dated 1 October 1987 (Notification), notified that the rate of interest on delayed payment shall be 10%. However, in the matter at hand, the interest rate awarded to the petitioner was 4% by the respondent controlling authority without recording any reasons on why the 10% interest rate was not levied.

The court opined that in the aforesaid circumstances the order passed by the respondent controlling authority was illegal and unjust. The court therefore concluded that the judgment passed by the respondent in respect of the payment of 4% interest is contrary and against the law. The employers are, therein, required to pay 10% interest on the delayed payment of gratuity as supported by the Notification.



### Arbitration agreement in unstamped contract exigible to stamp duty cannot be registered: Supreme Court

The Supreme Court in the case of M/s NN Global Mercantile Private Limited v M/s Indo Unique Flame Limited and Others [Civil Appeal Number 3802-3803 of 2020] dealt with the issue on whether the non-stamping of the substantive contract / instrument would render the arbitration agreement non-existent in law, void and unenforceable at the stage of Section 11 of the Arbitration Act, 1996 (appointment of arbitrators), for the purpose of referring a matter for arbitration.

The majority judgment held that if the contract, in which the arbitration clause is contained, is exigible to stamp duty, then registration cannot be done without the instrument being duly stamped. Hence, an instrument which is exigible to stamp duty and contains an arbitration clause but which is not stamped, cannot be said to be a contract that is enforceable in law.

### Conciliation proceedings shall be treated to be conclusive when the failure report reaches the appropriate government: Bombay High Court

In Sandoz Private Limited v Bhartiya Kamgar Karmachari MahaSangh [Writ Petition Number 10475 of 2022], the Bombay High Court dealt with a matter wherein the petitioner had appealed against the order of the industrial court which held that there was a *prima facie* case of breach of the compliances required to be made in respect of retrenchment, especially because the petitioner had terminated the services of the professional service representatives (PSRs) while the conciliation proceedings were pending.

The background of the matter was that the respondent union had approached the industrial court with a complaint for unfair labour practices alleging that the petitioner was in the process of reorganization of its business with a design to surreptitiously get rid of the workmen, who were permanent workmen selling / marketing products. While the conciliation proceedings were underway,

the workmen alleged that they were retrenched by the petitioner. The industrial court held that the PSR satisfied the description of workmen and were entitled to reliefs under the Industrial Disputes Act, 1947 (ID Act).

The court delved into the issue whether the failure to give notice of change under Section 9A (*notice of change*) of the ID Act for retrenchment by the petitioner in the aforesaid circumstances amounted to illegal change of service conditions.

The court opined that whether retrenchment amounts to a change in condition of service would depend upon the nature of the industrial dispute pending before the court, tribunal, or authority. The court basis the aforesaid opinion appreciated the essential nature of dispute in the present matter which dealt with an impending threat of the PSRs being rendered without work. Further, the court observed that there is prohibition against altering conditions of service with respect to any matter connected with the dispute, which was disrupted by the petitioner terminating the services of the PSRs while the conciliation process was not completed. The nexus between the matter in dispute and the action complained of determines the applicability of Section 33(1)(a) (*conditions of service to remain unchanged during pendency of conciliation proceedings*) of the ID Act, which was established in the present matter by the action of the petitioner resulting in termination of services of the PSRs.

Further, the court observed that a conjoint reading of the provisions contained in Section 12(4) (*when no settlement is reached between parties, the conciliation officer is required to send full report to the appropriate government*) and Section 20 (*commencement and conclusion of conciliation proceedings*) of the ID Act makes the legislative intention clear that the conciliation proceedings initiated under Section 12(4) of the ID Act, whether of a discretionary nature or a mandatory nature, shall be treated to have continued and only to have concluded when the failure report reaches the appropriate government. However, in the present matter, the retrenchment order was passed before the failure report could be prepared and forwarded to the



appropriate government. Additionally, the court also opined that the conduct of the parties is also considered when granting equitable relief. In the present instance, the court noted that the petitioner had passed the retrenchment order a day before the date of motion for interim relief was filed by the respondent. Accordingly, the court dismissed the petition at hand.

## 04.

### INDUSTRY INSIGHTS

In this section, we delve into interesting human resources related practices and/or initiatives as well as industry trends across various sectors in the past one month.

#### India Inc increases trans hiring

In an effort to keep up with the evolving hiring practices and promote inclusivity, Indian companies are proactively [creating](#) employment opportunities for transgender individuals, including for the leadership positions. Besides providing career opportunities for transgender individuals, this

also ensures diversity at the management level of an organisation.

To attract and hire more transgender individuals, companies are conducting targeted recruitment drives, which focuses on reaching out to 'trans' communities and individuals, including pre-placement offers for trans students alike. Companies are also implementing gender-neutral policies to ensure inclusivity in the workplace and making provisions for facilities such as accessibility of washrooms to all employees regardless of their gender identity and ensuring that the application forms and other onboarding documents do not require such individuals to disclose their gender identity. Additionally, organisations in India have recently undertaken active amendments to their internal policies related to adoption, medical care, and insurance to make them robust and gender neutral, thereby covering partners of employees, without limiting them to employees' spouses. Further, companies are also providing healthcare benefits to their employees that cover gender-affirming treatments, such as hormone therapy or gender reassignment surgery. Such practices and procedures implemented by India Inc are a progressive move, which would ensure better retention rates of talented individuals pan industry.

We hope the e-Bulletin enables you to assess internal practices and procedures in view of recent legal developments and emerging industry trends in the employment and labour law and practice landscape.

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## AMBITION STATEMENT

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